IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

CRL.APPEAL No. 9 of 1999

ST.1336/1998 of JUDL. MAGISTRATE OF FIRST CLASS, MALAPPURAM

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APPELLANT/COMPLAINANT:

P.C. ABDUL KAREEM, PROPRIETOR, PATREX,
S/O. KUNHIMU, PARANGOTH HOUSE, MALAPPURAM

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS/ACCUSED & STATE:

1. KAKKADASERY ASHOKAN, S/O. KORU VAIDIAR,
   PUTHANANGADI, VALIYORA P.O., MALAPPURAM.

2. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.P.K.SURESH KUMAR
SRI.K.P.SUDHEER
R2 BY PUBLIC PROSECUTOR SHRI K.C.SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl. Appeal No. 9 of 1999

Dated this the 31st day of January, 2007

Judgment

This appeal was filed by the complainant against acquittal of the accused under section 256 (1) of the Code of Criminal Procedure as complainant was absent on 24.10.1998 before the trial court. It is stated in the order that the accused was also absent on that day. Therefore, presence of the complainant was not mandatory. Even though a complaint can be dismissed and accused can be acquitted for absence of the complainant, it cannot be done mechanically. When accused was absent, presence of the complainant was unnecessary and, in any event, one more opportunity should be given by the trial court. Therefore, I set aside the impugned order and remand the matter to the trial court.

Both parties should appear before the trial court on 26.3.2007 for proceeding further according to law.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy J.

Crl.A.No.9 of 1999

Judgment

31-1-2007